NO. 05-35774; 05-35780

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WASHINGTON STATE REPUBLICAN PARTY, et al.,

Appellee/Plaintiffs,

WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE, et al.,

Appellee/Plaintiff Intervenors,

and

LIBERTARIAN PARTY OF WASHINGTON STATE, et al.,

Appellee/Plaintiff Intervenors,

v.

STATE OF WASHINGTON, et al.,

Appellant/Defendant Intervenors,

and

WASHINGTON STATE GRANGE,

Appellant/Defendant Intervenor.

WASHINGTON STATE DEMOCRATIC CENTRAL COMMITTEE'S RESPONSE IN OPPOSITION TO STATE'S MOTION TO VACATE AWARD OF ATTORNEYS' FEES AND COSTS

I. INTRODUCTION

The Washington State Democratic Central Committee (the "Democratic Party") and Dwight Pelz, its chairman, Appellee/Plaintiff-Intervenors in the above captioned action, Oppose the State of Washington's (the "State") Motion to Vacate Award of Attorneys' Fees and Costs and for

Judgment Awarding Restitution of Fees and Costs.

The State's motion asks the Court to rewrite a settlement agreement entered into in good faith by the Democratic Party and to insert into that agreement a right for the State to unilaterally rescind it. The settlement agreement was clearly understood to be final, irrespective of further proceedings in this case. The State's invitation to rewrite it after the fact should be rejected.

II. BACKGROUND

On September 11, 2006, James Pharris, counsel for the State of Washington, contacted counsel for the Democratic Party, indicating that the Libertarian Party had invited an offer of settlement for its claims for attorneys' fees and costs in this proceeding. Declaration of David T. McDonald ("McDonald Decl.") ¶2, Exhibit A. Mr. Pharris suggested that the State would be willing to compromise the Democratic Party's claims for fees and costs in connection with the Ninth Circuit appeal of Judge Zilly's July 2005 Order as well, though he did not yet have authority to make a definite proposal.

Several days later, on September 15, 2006, Mr. Pharris sent an email to counsel for the Democratic Party indicating "I am prepared to make the

following offer of compromise on the claims for costs and attorneys [fees] relating to the Ninth Circuit Appeal in this case: 1. The state will agree to compromise fees and costs relating to the Ninth Circuit Appeal...." McDonald Decl. at ¶3, Exhibit B. The State's offered to pay the Democratic Party less than the amount that the Democratic Party would claim if it pursued the matter. The State's offer was not conditioned on the State losing its appeal in the United States Supreme Court. Mr. Pharris suggested that if the proposed compromise was acceptable it should be incorporated into an agreed order.

Later that day, counsel for the Democratic Party responded:

> The Democratic Party agrees to the compromise of its current Ninth Circuit Fee and Cost Claims. *We understand that this settlement will be final* as to our claims for attorneys' fees and costs for the Ninth Circuit proceedings related to the appeal of Judge Zilly's July 2005 through the date of the settlement, *irrespective of further proceedings in the case.*

McDonald Decl. at ¶3, Exhibit C. (emphasis added.)

Thereafter the parties entered into a "Stipulation and Order Regarding Attorneys' Fees and Costs on Appeal." In this document, the State stipulated that the Democratic Party was entitled to an order awarding fees and costs in the negotiated settlement amount. The Stipulation and Order is not conditional and does not contain any provision allowing the State to

rescind the settlement if it later finds its bargaining position improved. State's Motion, Exhibit B. On October 3, 2006 this Court entered an order finding in pertinent part:

> The parties have informed the court that they have reached a settlement concerning an award of fees in this appeal. Pursuant to the terms of the stipulation . . . appellant State of Washington shall pay ... attorneys' fees of $37,460.77 and $213.20 in costs to appellee Washington State Democratic Central Committee.

State's Motion, Exhibit C. On October 4, 2006, the State tendered that amount to the Democratic Party indicating that deposit of the check would be "acknowledging that this judgment has been satisfied in full." McDonald Decl. at ¶4, Exhibit D. The Democratic Party cashed the warrant and the settlement was completed.

The State thereafter appealed this Court's decision affirming Judge Zilly's July 2005 Order. It did not appeal the Court's October 3, 2006 Order (Dkt. # 114) implementing the parties' settlement.

III. ARGUMENT

The State of Washington did not need to enter a settlement with the Democratic Party nor did it need to pay an award of attorneys' fees and costs to the Democratic Party until the completion of the case. It voluntarily

chose to do so. Rather than wait to see whether it would later prevail in the case, the State reached out to the Democratic Party in an effort to seek a compromise of its claim for fees. The Democratic Party agreed, but expressly noted that it was agreeing on the understanding that the settlement was final irrespective of later proceedings. The State did not reply with any contrary understanding nor did it indicate that it was only compromising the amount of the claim while reserving its right to contest liability for the fee award. The State's motion asks this Court to rewrite the settlement agreement so as to give the State a unilateral right to rescind the agreement and to insert language limiting the scope of the dispute settled. The State's motion should be denied.

It is well settled law in this Circuit that when "courts have inherent power summarily to enforce a settlement agreement with respect to an action pending before it; *the actual merits of the controversy become inconsequential.*" *Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978) (internal citation omitted) (emphasis added). "Federal courts have held under a great variety of circumstances that a settlement agreement once entered into cannot be repudiated by either party and will be summarily enforced." *Cia Anon Venezolana De Navegacion v. Harris*, 374 F.2d 33, 34

-35 (5th Cir. 1967). Indeed, "[c]ompromises of disputed claims are favored by the courts. Where the parties, acting in good faith, settle a controversy, the courts will enforce the compromise without regard to what the result might, or would have been, had the parties chosen to litigate rather than settle." *Id.* at 35 (quoting *J. Kahn and Co., Inc. v. Clark*, 178 F.2d 111 (5th Cir. 1949).

Of course, "[t]he construction and enforcement of settlement agreements are governed by principles of local law which apply to interpretation of contracts generally." *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989). As a general rule, Washington State courts "will uphold whatever lawful agreement the parties made with each other." *Dix Steel Co. v. Miles Constr., Inc.*, 74 Wn.2d 114, 119, 443 P.2d 532 (1968). State "law favors the avoidance or settlement of litigation, and compromise in good faith for such purposes will be sustained as based upon a sufficient consideration, without regard to the merits of the controversy or the character or validity of the claims of the parties, *and even though a subsequent judicial decision may show the rights of the parties to have been different from what they at the time supposed.*" *Opitz v. Hayden*, 17 Wn.2d 347, 370, 135 P.2d 819 (1943) (emphasis added).

The State is not entitled to unilaterally rescind its settlement with the Democratic Party. "[A] litigant can no more repudiate a compromise agreement that he could disown any other binding contractual relationship." *Dacaney*, 573 F.2d at 1078.

IV. CONCLUSION

The evidence demonstrates that the parties' Stipulation and Order was notice to the Court of a valid, enforceable settlement agreement, made between parties of equal bargaining power, which the Court then enforced at the parties' request. The State's desire to reopen—and now rewrite—its settlement agreement with the Democratic Party should be rejected.

RESPECTFULLY SUBMITTED this seventh day of May, 2008.

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